

CRIMINAL APPELLATE.

Before Mr. Justice Heaton and Mr. Justice Shah.

EMPEROR v. BANDU EBRAHIM AND ANOTHER.*

*Indian Penal Code (Act XLV of 1860), section 343—Wrongful confinement—
Detention of prostitutes in brothel-house.*

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Accused No. 1 who had a woman in his keeping at Kolhapur, brought her from Kolhapur to Bombay where he kept her in the brothel of accused No. 2. There she led the life of a prostitute, her movements were watched, and a guard was kept at the entrance of the house. She was occasionally allowed to go out of the house under surveillance. It appeared that accused No. 1 had on previous occasions supplied women to accused No. 2 :

Held, that on these facts accused Nos. 1 and 2 were both guilty of the offence of wrongfully confining the woman.

THESE were appeals from convictions and sentences passed by B. N. Athavale, acting Fourth Presidency Magistrate of Bombay.

The facts were that one Vithibai lived with Bandu (accused No. 1) as his mistress at Kolhapur. She was brought by accused No. 1 from Kolhapur to Bombay and kept with Bayabai (accused No. 2), who was a brothel keeper. The accused No. 1 also lived with her at the brothel for a fortnight, during which time Vithibai was made to borrow a sum of Rs. 100 from a Marwari money-lender and pass a Khata to him. The accused No. 1 took the money away with him when he returned later to Kolhapur. On previous occasions accused No. 1 had supplied women to accused No. 2 for her brothel.

At the brothel Vithibai led the life of a prostitute. Her earnings were taken by accused No. 2. A watch was kept over her movements in the house. The entrance to the house was guarded by two persons.

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She was occasionally allowed to go to the market and other places under surveillance.

After she lived in this state for over six months, she addressed a petition to the Commissioner of Police at Bombay through the instrumentality of a visitor of hers for liberation from the house.

On these facts, accused Nos. 1 and 2 were tried by the acting Fourth Presidency Magistrate of Bombay for wrongfully confining Vithibai in the house of accused No. 2. They were convicted of the offence and sentenced each to suffer rigorous imprisonment for two years.

The accused appealed separately.

Velinkar, with *D. W. Pilgamkar*, for the accused :— At first Vithibai lived with accused No. 1 at the house of accused No. 2 in Bombay. There was no wrongful confinement as long as accused No. 1 lived there. Even after he left for Kolhapur, Vithibai chose to live at the house. She knew—or at any rate ought to have known—that inmates of a brothel are always subjected to some restraint in their movements. She voluntarily accepted such restraint when she chose to live in the brothel still she was occasionally allowed to go out to the market and other places in company of other inmates.

S. S. Patkar, Government Pleader, for the Crown, was called on to reply as regards accused No. 1 only :— When accused No. 1 left Vithibai at the brothel, he must have known that she would be wrongfully confined in that house. This knowledge is sufficient for proving his guilt.

SHAH, J. :—We have heard an interesting and a careful argument from Mr. *Velinkar* on behalf of the appellants in this case. I have considered the evidence

in the light of his arguments and the criticism to which the evidence has been subjected by him. The charge against the two accused is that from the 10th of October 1916 they wrongfully confined one Vithibai for three or more days and thereby committed an offence punishable under section 343 of the Indian Penal Code. The accused No. 2 is a brothel keeper in Bombay and accused No. 1 is said to have supplied women to be used as prostitutes in this brothel from time to time. He brought Vithibai, the complainant in this case, to Bombay and kept her in the brothel of accused No. 2. The case for the prosecution is that this Vithibai like other women in the brothel was kept in confinement. Vithibai stayed on in the house kept by accused No. 2 from the 10th of October until May 1917 when an application was prepared on her behalf by the witness Abdul Gani and sent to the Commissioner of Police. Thereafter an enquiry was made and the present prosecution is the result of that investigation.

The evidence for the prosecution consists of the statements made by Vithibai and three other women who stayed in the house, namely, Chandrabai, Godibai and Sundri. Vithibai describes the manner in which she was kept in this house in these terms:—"I was always kept in confinement by the accused No. 2. The accused No. 1 Bandu lived with me in the brothel of the accused No. 2 for eight days. During these eight days I was not free to go out anywhere. The brothel of the accused No. 2 is on the first floor of a house at Kamatipura. The entrance to the building was always kept closed. It used to be opened for the visitors but the servant in charge used to close it up. The servant used to be always at the door. Besides this servant a man and his woman used to keep guard over us and, therefore, we were not free to go out of

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the house." To the same effect is the evidence of Chandrabai. She says as follows:—"We four were kept like prisoners in the brothel. We were never allowed to go out. One Vitha and her paramour Dewoo used to keep watch over us." And Godibai deposes to the same effect:—"They were constantly in a state of confinement. There is a woman named Vitha on the brothel and she has a paramour named Dewoo. Vitha and Dewoo watched the four girls." Sundri, who was examined by the Court, stayed in the brothel for a short time; she swears that accused No. 2 never allowed her to go down. This evidence, if believed, would clearly show that accused No. 2 wrongfully confined the complainant Vithibai.

The main argument on behalf of the defence has been that these women who more or less voluntarily submitted themselves to prostitution now exaggerate matters and that their evidence is not worthy of credence. In the first place the learned trial Magistrate, who saw these witnesses, has in the main believed them. I have read the evidence of these witnesses, particularly the cross-examination of Vithibai; and after a careful consideration thereof I am unable to find any good reason to hold that in so far as they speak of wrongful confinement their evidence is not true. I am satisfied on the evidence of these four women that not only was Vithibai kept in a state of confinement, but that the women in this brothel house were kept in that state and that such confinement was a part of the life which the inmates of the house were constrained to live. It has been urged on behalf of the accused that Vithibai had abandoned her husband and lived for some time with accused No. 1 at Kolhapur as his mistress, that she accompanied him to Bombay voluntarily and that she took to the life of prostitution voluntarily. I have carefully considered

this argument; and having regard to the circumstances of the case I am not satisfied by any means that Vithibai did voluntarily submit herself to the life which she undoubtedly led in the house of accused No. 2. If the evidence as to wrongful confinement is true, it is not easy to believe that these women submitted themselves to prostitution voluntarily. However, I am willing to assume for the sake of argument in favour of the defence that Vithibai of her own accord accompanied accused No. 1 and commenced to stay in the house of accused No. 2 to lead the life of a prostitute. Even then the question is whether the wrongful confinement to which she is said to have been subjected is proved. I am satisfied that the evidence as to wrongful confinement is true. It is urged on behalf of the defence that now and then Vithibai and other women in the brothel were allowed to go out. It seems to me, however, that their going out casually does not make their confinement in the house any the less wrongful on that account. The mere fact that they could leave it on occasions probably under proper control and largely according to the wishes of accused No. 2, goes to emphasize in my opinion the truthfulness of the evidence that generally they were kept confined in the house and were used for the purposes of prostitution under that restraint. Having regard to this view of the evidence in the case there can be no doubt about the guilt of accused No. 2.

It has been urged as regards accused No. 1 that he stayed in the house of accused No. 2 only for a short time after Vithibai was placed in her charge and that during that time Vithibai had no reason to complain. As stated by her in her cross-examination for a week or fortnight after she was brought to Bombay she was all right and that after accused No. 1 left, accused No. 2 put her to prostitution. No doubt this statement so far

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as it goes is in favour of accused No. 1, but there is evidence in the case to show that this was not the first time that accused No. 1 supplied a woman to accused No. 2. There is a letter, Exhibit C in the case, which goes to show that accused No. 2 depended upon accused No. 1 for this purpose ; and there is other evidence in the case to show that the accused No. 1 used to supply women to accused No. 2 for this immoral purpose. That being so, it is a fair and proper inference that he knew the conditions under which the women in this house had to live. The accused No. 1 himself was in the house for some days, certainly exceeding three days. The evidence also shows that the wrongful confinement alleged in respect of Vithibai was not restricted to that particular woman but that such confinement was an ordinary incident of life in this brothel. I am, therefore, unable to accept the argument on behalf of the defence that accused No. 1 could not have known the conditions under which Vithibai would have to live in the brothel. The evidence of Vithibai herself shows that during the time that accused No. 1 stayed in the house of accused No. 2, she was practically confined in the house and was not allowed to move out. It may be that she was not put to prostitution during that time, but the fact remains that accused No. 1 brought her to this house and left her there practically in a helpless condition knowing the kind of life which she would have to lead and the conditions under which she would have to live. There is also evidence in the case to show that certain moneys were borrowed from two Marwadis in the name of Vithibai, and I am satisfied on the evidence that though the borrowing was in the name of Vithibai, the money did not reach her or remain with her. Under the circumstances it is not an unreasonable inference that the sum of Rs. 100 which was borrowed in the

name of Vithibai was given by accused No. 2 as a consideration to accused No. 1. But whatever the truth about this sum of Rs. 100 may be, the evidence makes it clear that accused No. 1 and accused No. 2 knew each other very well and that accused No. 1 was fully aware of the condition in which he left Vithibai in the house of accused No. 2. I am, therefore, satisfied that accused No. 1 was also instrumental in wrongfully confining Vithibai during his stay in the house of accused No. 2 and that he is equally guilty, though he may not be equally responsible for the subsequent wrongful confinement by accused No. 2. I am unable to accept his explanation that when he left Bombay for Kolhapur he offered to take Vithibai with him but that Vithibai, of her own accord, refused to leave the house of accused No. 2. I have no hesitation in accepting the evidence of Vithibai on this point in preference to the explanation offered by accused No. 1. The charge brought against the two accused is clearly established, and their convictions must be confirmed.

As regards the sentence it is undoubtedly a serious offence and not easy of detection. Further the evidence shows that this system of wrongful confinement was not restricted only to the complainant but was generally adopted in respect of practically all the women who were kept in the house. On the other hand it is to be remembered that Vithibai's antecedents are not in her favour and it is possible that she voluntarily accompanied accused No. 1 to Bombay and was perhaps not unwilling to be kept in the house of accused No. 2 for an immoral purpose. Having regard to all the circumstances of the case, I think that the sentence ought to be substantial and deterrent. I do not think, however, that there is any need for the maximum sentence allowed by the section. I think that the sentence of one year's rigorous imprisonment in the case of each of the accused would be sufficient to

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meet the ends of justice, and I would accordingly reduce the sentence to that period in the case of each of the appellants.

HEATON, J. :—This case is of some considerable importance in itself as it raises a question that needs very careful consideration and so I will give in my own words my view of the salient features of the case.

It is admitted that the inmates of accused No. 2's brothel were subject to a certain degree of restraint. There was a barred door and the egress and ingress of persons was watched. The prostitutes were dependent on the brothel-keeper accused No. 2, for their food, clothes and ornaments. The money earned by the prostitutes was taken by the brothel-keeper.

All these matters are either notorious and admitted or are clearly indicated by the evidence. The daily circumstances of life are therefore such that this *normal restraint* could very easily be tightened so as to become virtual imprisonment and be of such a nature as to amount to wrongful confinement within the meaning of the Indian Penal Code. The question before us is whether on the evidence recorded by him the Magistrate was rightly convinced that this was the case. I think he was. The evidence is specific enough and it is the evidence of persons with knowledge of what they spoke about. Not only did the principal person concerned, the complainant in the case, give evidence but three other prostitutes, inmates of this brothel, also deposed to the state of virtual imprisonment in which they lived.

It is perfectly true that prostitutes are not reputed to be scrupulously truthful persons and it is true also that the four witnesses I have mentioned were no doubt indignant with, and exasperated against, the brothel-keeper accused No. 2. These are matters to make us cautious in accepting their testimony. Nevertheless

with this need for caution in my mind I accept their testimony as a substantially true account of their ordinary conditions of life. I do not suppose, however, that they were never allowed to go out ; that they were perpetually in confinement. That was probably not so ; indeed, certain excursions into the outside world are admitted. But though not perpetual the normal condition of the complainant Vithibai was, I am satisfied, a condition of real confinement. There is nothing improbable or remarkable in this. As I have shown the normal restraint is easily tightened. In Vithibai's case moreover there is an undoubted circumstance which shows that she felt herself to be a helpless prisoner.

What released her from this brothel was a petition which was sent to the Commissioner of Police. The petition was got written by one Abdul Gani who had visited and conversed with Vithibai in the brothel. It relates that she is ill-treated and anxious to be released. That petition, unless it can otherwise be explained, does show conclusively that this woman felt herself to be in a hopeless condition, unable to escape, unable to reach freedom. And that could hardly be unless in fact she were under such restraint as to amount indubitably to wrongful confinement within the meaning of the Indian Penal Code. An explanation of this petition is offered on behalf of the accused, but I confess it seems to me that it has far less probability about it than the explanation which I have just recited. I believe myself that this petition was signed by the woman, or caused to be signed by her; because of a genuine desire to escape and a very real feeling that unaided she was unable to do so.

The case of accused No. 1 is of course different. But I think that as against him also the evidence establishes the charge. Taking into account the evidence and the circumstances which have been disclosed I cannot but

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believe that accused No. 1 knew the state of affairs in accused No. 2's brothel. He knew that Vithibai would be subjected to the conditions of life there prevailing. I do not doubt that he did all that was on his part necessary to detain Vithibai in the brothel so long as he himself was there and I do not doubt that he left in the assurance that she would be, as indeed she was, detained there after he had left. On those facts I think that he took so essential and material a part in the confining of this girl that he is guilty of this offence as a principal.

I agree with my learned colleague that this is not one of those peculiarly atrocious cases which sometimes arise under the Indian Penal Code and I agree that the sentence of twelve months' imprisonment for each of these appellants is in the circumstances quite as heavy a sentence as justice and law in this case require.

Sentences reduced.

R. R.

CRIMINAL REVISION.

Before Mr. Justice Heaton and Mr. Justice Shah.

*In re RAMRAO N. BELLARY.**

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Criminal Procedure Code (Act V of 1898), section 195—Sanction to prosecute—Abetment of perjury before a Committing Magistrate—Application for sanction made to the Committing Magistrate—Transfer of the Magistrate pending inquiry—The Magistrate succeeded by another Magistrate who had no power to commit—Sanction proceedings sent to District Magistrate—Grant of sanction by District Magistrate.

It was alleged that the applicant, who was a pleader, had, during the course of an inquiry before a Committing Magistrate, abetted perjury. An application for sanction to prosecute the applicant was, therefore, made to the

* Criminal Application for Revision No. 271 of 1917.